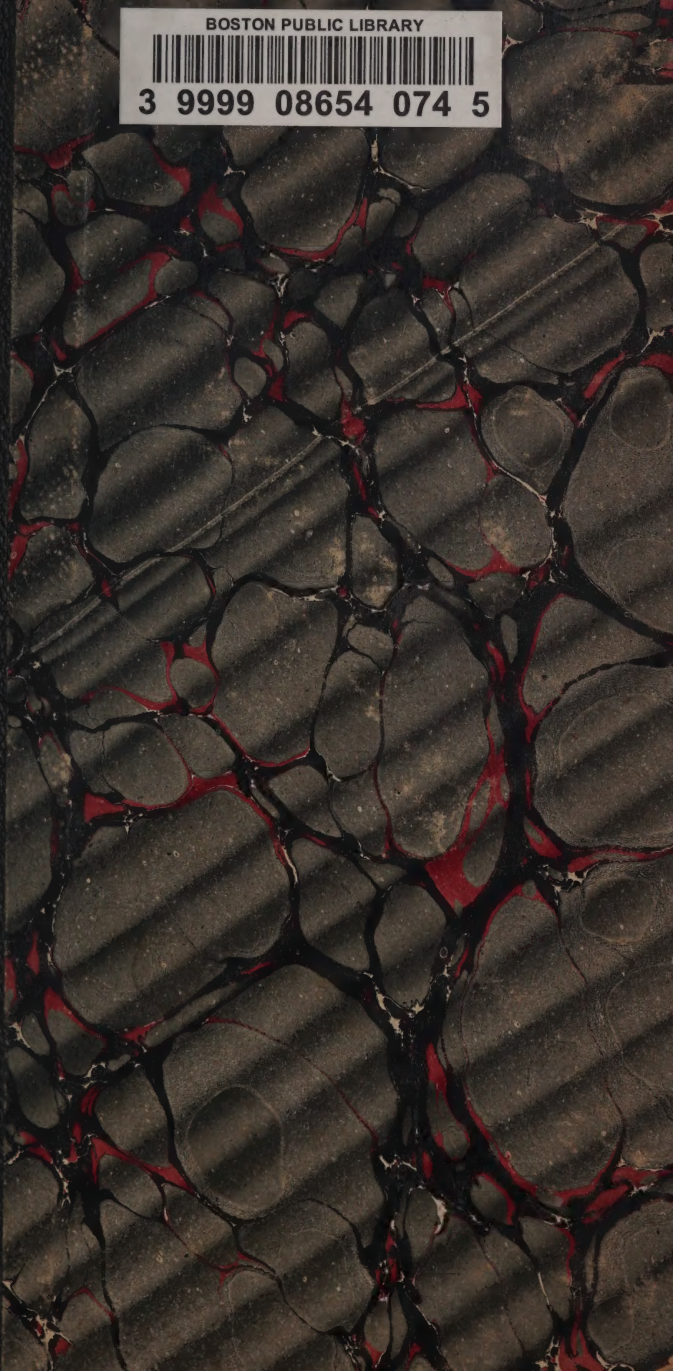


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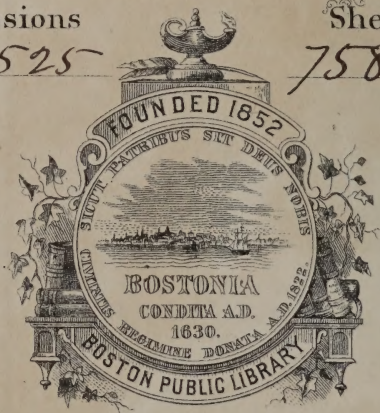


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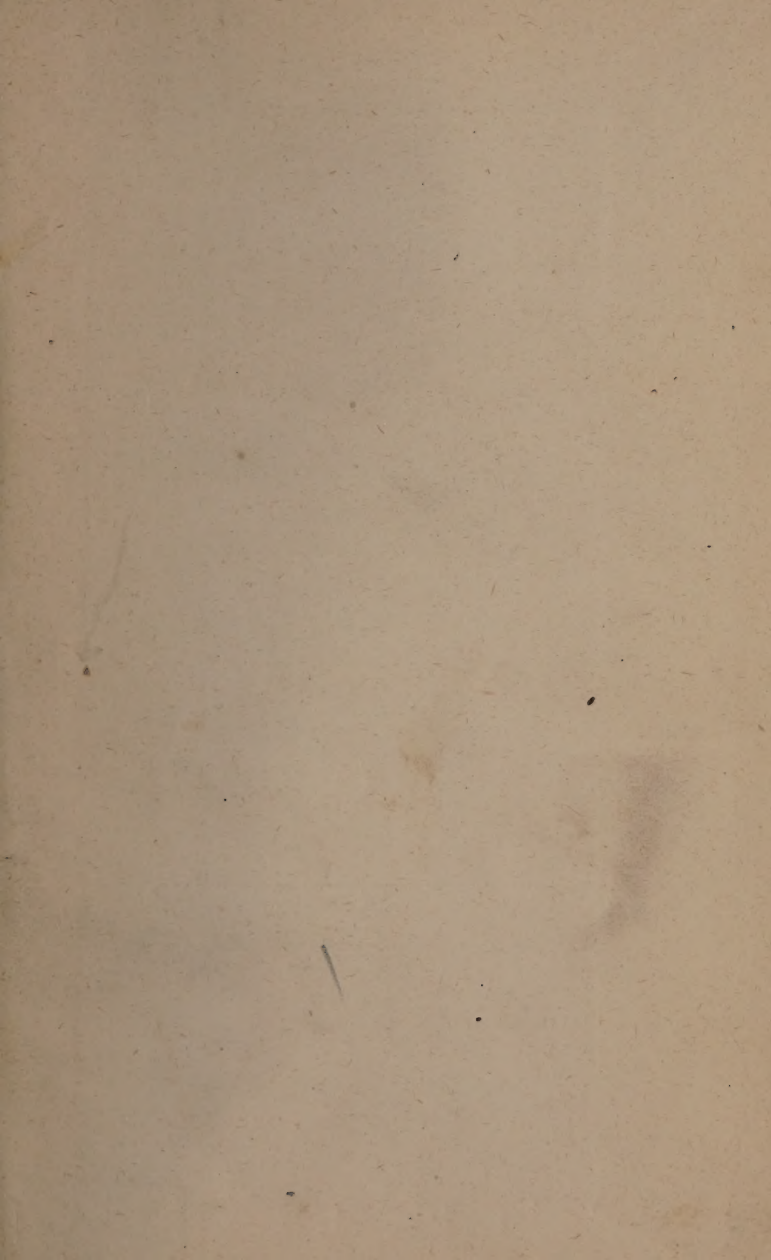
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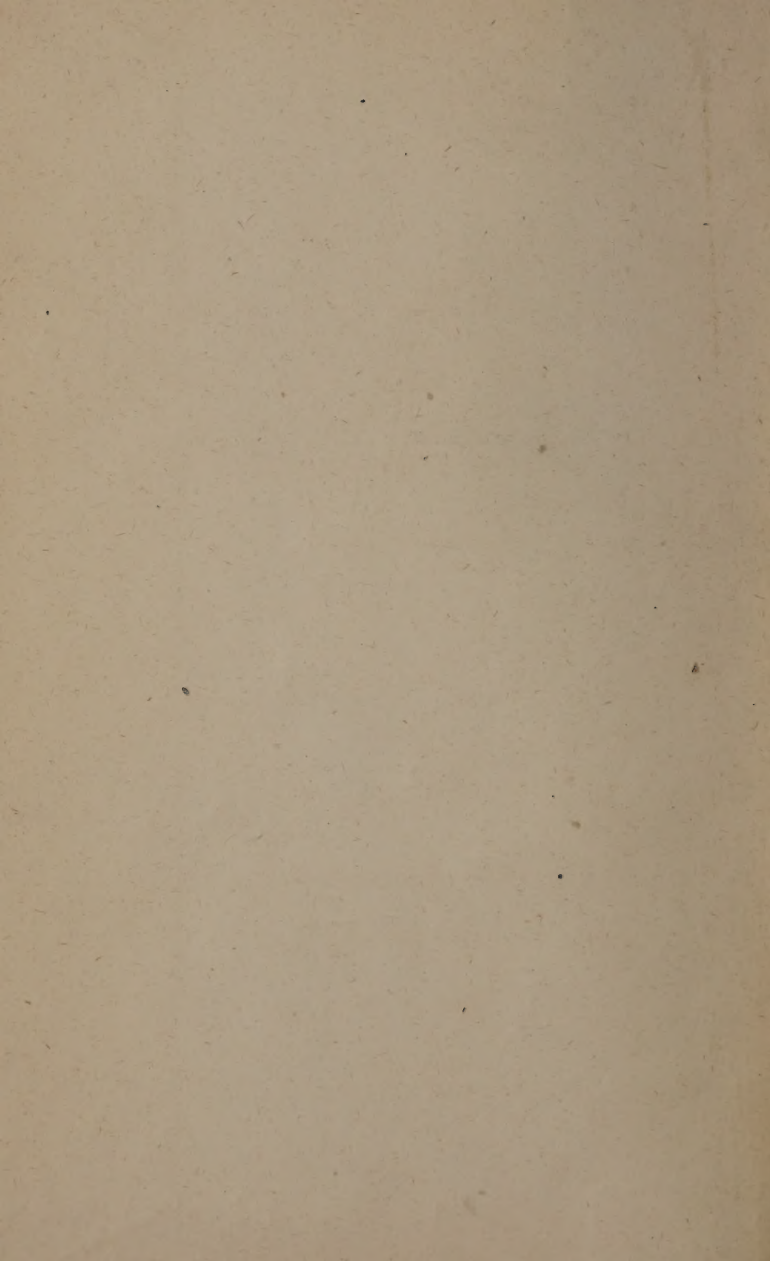
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Received

Dec 9 1870





THE CRACKED JUG,

OR

FIVE ANSWERS

TO

MY NEIGHBOR PARLEY'S

FIVE LETTERS,

CRACKING HIS

“FIFTEEN GALLON JUG,”

WITH A

PREFACE,

AND A

CONGRATULATION,

BY “NEIGHBOR SMITH.”

THIRD EDITION

BOSTON :
PRINTED FOR THE AUTHOR.
1838.

VB. A.

110.525

Dec. 9, 1870.

PREFACE.

Some time ago my neighbor Parley ; I should rather say the Hon. PETER PARLEY ; (for I like to give every great man his title,) addressed five letters to me, with a Preface and a Postscript, which he called the "FIFTEEN GALLON JUG," and marked it, O. B. To have been thus noticed by so distinguished a personage was certainly a great honor, and one I intended to have enjoyed all to myself. I have not therefore, replied to those letters, as perhaps I ought to have done in the first instance. In fact my neighbor seemed at one time so sensible that he had exposed himself to a cutting retort, for inconsistency, in his eagerness to play the author at the expense of the decent neighbor and fair man, that I had made up my mind to let him off. But he has recently suffered himself to be put up for a responsible office, and in asking the votes of the people, he asks them to approve of his conduct as a neighbor and a man. For this reason, I have changed my mind, and after letting his personal attacks on me run through two or three editions, I shall now try to do up my part of the correspondence he has thrust upon me. I am no professed author like my neighbor, and had he not sent me an article I am accustomed to handle, I might have been at a loss how to treat it. But a *Jug* is a utensil as familiar to me as a copy right is to my neighbor ; and without vanity, I could recommend myself as Inspector General of Jugs. The first service I remember I did my father, in my boyish days, was to carry to the field a jug of cider. I have filled Jugs on the prescription of many excellent Physicians, and I have often handled the Jugs of other temperance men as well as those of my neighbor Parley, who, I must do him the justice to acknowledge, always brought me sound Jugs

before this, and I filled them, in the most dutiful manner with good old Jamaica and "O. B." It just comes to my mind now, what my neighbor means by his signature of "O. B." *old Brandy*.

He knew I should understand it. As I said, he always brought me sound jugs before, but I am afraid that in this instance his "Jug" is a "weak vessel:" if so, my habit is to crack it at once, for I never allow myself to endanger good liquor.

My neighbor has condescended to tell who I am; and might be offended (for I wish to be civil,) if I do not tell who he is.

My neighbour Parley then, is a wholesale dealer in pretty little harmless stories for the nursery and other natural curiosities, said by the best judges (I am no critic myself except in *jugs*) to contain so little *spirit* as to render it wholly unnecessary at present, to pass a law for the common good, prohibiting their sale in less than fifteen copy rights, to be taken and carried away at one time. The retail not having been forbidden to those who bought to sell again, he has found a fair market, for he has some tact as a salesman in books as well as lands, a circumstance not unfamiliar to some of his neighbours, and is reputed to have acquired large wealth thereby, at least on paper.

As I am proud of having such a correspondent as well as neighbour, I wish it to be known also, (which his modesty may have concealed,) that he has even visited England, where he disposed of some *notions* in the form of *copy* rights, and acquired other *notions* touching *equal* rights, to which I am probably indebted for his distinguishing notice of me. Seeing there, an imposing aristocracy who indulge in elegant luxury at the expence not only of the liquor, but the *bread* of the laboring classes, he came home quite addled, built the castle of Rockland, and became an oracle in the village and a lawgiver in the land.

In 1836, he commenced as a total abstinence legislator, and I mention with pleasure, as a proof of his disinterestedness, that he has never hesitated to support all laws not interfering with his *own* appetite, and especially the new licence law; being always philanthropic enough in the cause of temperance, to wish to prevent *others* from getting liquors, although during the whole time, he has purchased and probably used much more than *his* due pro-

PREFACE.

portion of the wine and strong drink that have been imported into the state, since that period.

This may seem to some, a little inconsistency in character, but as I have often heard my neighbor call ardent the *enemy* of the human race, I rather attribute his conduct to benevolence, in loving his enemy. The notion of equal rights which he acquired abroad is also in strict conformity with the wholesome doctrine he inculcates, as a part of his creed of "fireside" rights, viz: keeping down the appetites of the poor and pampering those of the rich. A man of the profound observation of my neighbor Parley, would have visited England to little purpose if he had not discovered that the first principle in legislation there, is that laws are only wanted to restrain the poor and foster the rich; and therefore the true distinction in making laws is that the rich and the well born are to do as they please, and also have the privilege of making the poor do as they please. The common sense of common men is not to be trusted in any thing relating to indulgence, God having given them false appetites in order to make it necessary that their superiors should have the pleasure of ruling over them.

I have no idea that my neighbor is more aristocratic than most great men would be under like circumstances; and it cannot be expected that an author, a castle builder and a senator, should regard the common class as possessing the moral power to resist temptation, which he must so eminently enjoy, if indeed he acts up to his professions, surrounded by so many of the luxuries he would legislate away from others.

As my neighbor sets up for a phrenologist as well as moral reformer, it is proper to say that his bumps of self esteem and approbateness are remarkably developed. Of course he courts distinction, and thinks himself deserving of office, an opinion likely to be entertained longer by himself than by others. But though he sometimes pushes his purpose of acquiring political power somewhat to the sacrifice of plain dealing and manly sincerity, I am not disposed to believe that he is worse than most other political aspirants "who have been long harnessed to the single task" of getting to Congress, and are pulling up hill all the while.

He is a kind and polite gentleman so long as his neighbors will assent to his modest pretensions, but should one of them, in the

sincerity of his heart, drop a word to wound his self esteem, he becomes restless, and is likely to let his heat get the better of his discretion so as to throw a "*jug*" at him or any thing else that comes to hand, and then after having wounded his neighbor and subjected him to the public gaze, by making a public stir about a friendly private conversation, he is astonished to find that everybody does not respect him.

I have told what my neighbor is, but this is nothing to what we all expect he will be, one of these days. Should this new experiment of sumptuary laws to indulge the rich and choke off the poor, succeed and a regular, legal aristocracy such as charmed my neighbor in England, be established here, it is hinted that he is to surrender the humble family name of *Parley*, having learned, while in France in pursuit of fine wines, that the name was of French extraction, and its true meaning, in English "all talk and no cider." In that event his neighbors have already chosen for him as his title in the new nobility, the *Earl of Rockland*. These few hints being thrown out to show the propriety of my replying to the letters with which he has honored me, I will now proceed to the ignoble office to which nature has appointed me, of examining my lord's great jug.

LETTER I.

INTRODUCTORY.

My learned Sir,—I did casually meet you, as you say, in Washington street, soon after you had given your vote for the new license law, and though conscious that I was conversing with an *author*, yet I did not suppose that I was to be put into *print*. Nevertheless, as you have seen fit to do so, I must needs reply the best I can.

I did express surprise at your vote, and I still feel it, because as you were a customer of mine, and the purchaser and user of good liquor, it struck me as not the most sincere or just thing in the world for you to claim great merit as a friend of temperance in voting for a law that merely cut off poorer men than yourself, but did not infringe, materially, your own indulgence, except that you would have to send to the store rather *larger* jugs than usual.

I could not, and do not suppose, you were as ready to cut off your own supplies as those of others; for so long as I have been your neighbor, I have never known you refuse a temperate glass, and I take it that you are quite as much opposed to a law that would put it out of *your* power to fill your jugs or casks or wine bottles, as others are to this law which is meant to prevent their buying in any less quantity.

Permit me, therefore, to call your attention to the fact, that since the year, you became a temperance legislator, voting for and supporting laws aimed against the class you suppose *below* yourself, you have yourself, though temperate I doubt not ill

your habits, bought much more than your *fair proportion* of the alcohol imported into this State.

On looking to my books I find that if *one fifth* of the population of Massachusetts had used as much whiskey, rum, brandy, and wine as you have put into your jugs at my store, *since* 1836, and the other four fifths of the population had not used a drop, there would, notwithstanding, have been required an importation into the State of

Irish Whiskey, - - - - -	24,800 gallons
Jamaica Rum, - - - - -	248,000 "
Cognac Brandy, - - - - -	372,000 "
Sherry, Port and Madeira, - -	1,612,000 "

2,256 800 gallons.

Equal to 20,516 *punchcons* of 110 gallons each, Nor is this all the share you claim in that you deny by force of law to others, with as good appetite, but less means than yourself. Of the quantity bought for cash during the same time, which is not inconsiderable, I took no account, and besides all this, you had, (and probably now have in part,) in your cellar a choice supply of French wines, collected by yourself while in France ; a supply so ample that you stated to your neighbors you had had some *hundreds* of bottles stolen from your cellar the last winter, and that too, while you were advocating the new Law at the Senate Board.

I relate these facts, not to upbraid you, but as a consolation to yourself and the like overzealous friends of temperance who are so greatly alarmed at the progress of drinking among the middling and laboring classes, but have no fears for themselves and the good society people. You will perceive, Sir, that if so much has fallen to your share, and you are not only a temperate man, but an advocate of laws to protect other men from themselves, you have much less cause to be alarmed on account of other people than you apprehended. If you can keep sober with all these temptations around you at home, you may surely console yourself in the hope that others can resist the temptations abroad.

You must excuse me therefore, for having expressed my surprise that you who were so liberal to yourself in these matters, should insist upon a law which still left all this indulgence to yourself, but was aimed to take it away from others. I have always been accustomed to plain dealing, and been taught to doubt the sincerity of that precept, which was not enforced by example, or of that philanthropy which exacts self-denial only in cases, where it has no inclination itself to indulgence. I must therefore, be allowed to say, that when I see gentlemen like yourself, making great professions, denouncing liquor dealers and passing laws to reach the poor man's cup but not to touch their own, I cannot help thinking that they are more in love with popularity than abstinence, and are of the sect of saints described in Hudibras, who

"Compound for sins they are inclined to,
By damning those they have no mind to."

As you identify me with the Appeal to the people of Massachusetts, it is only necessary for me to say that my sentiments on this question are there set forth, and I have not yet seen those arguments fairly answered, or in the least refuted.

I propose now to take the measure of your Fifteen Gallon Jug, and should any thing be said which you may complain of as throwing stones at the glass in your own windows, you will recollect I did not send the first missile. I am only picking, up and tossing back what you have thrown through my windows to disturb my domestic quiet. I have not sought notoriety in any form, have not mingled in any religious or political controversies, have claimed no merit as a moral reformer, and no votes as a candidate for office; but have tried to do my duty, with a conscience void of offence, in the humble place which I hold in society; and while my occupation is not at variance with the christian religion, or the customs of the great christian world, I shall consider it, if rightly pursued, as no more depriving me of the rights and privileges of a good citizen, than your occupation of fabricating Stories (and I fear in more than one sense) should you.

Your

NEIGHBOR SMITH.

To my neighbor PARLEY.

LETTER II.

In your second letter, you profess to inquire whether "*the late license law is incompatible with the Constitution of the United States.*"

We need not spend a great deal of time on this question; and a man of common sense, who never wrote a book, can understand it just as well as a great or little author. You say that you believe me to be a straight-forward man, who would not be guilty of fraud or chicanery. I can hardly return the compliment, when I see how you have treated this part of the argument. You affirm that "the authors of the Appeal say that their present efforts aim at the *repeal of the new, and the re-enacting of the old license law.*" This you quote as the language of the Appeal. when there is no such language and no such sentiment in it. You assume, also, that the Appeal denies the power of a State to regulate internal commerce between its citizens. On the contrary, the Appeal declares that "the United States Constitution interferes with no *sumptuary* law of a State, however outrageous and arbitrary." The State may say what books may be published and read, just as well as what liquor may be sold or drank, and the United States Constitution has no concern with it.

The argument drawn from the power of Congress to regulate commerce, as I understand it, is this:—The Constitution and laws of the United States authorize the importation of a certain article of merchandize into the States. With the quantities in which the importation shall be made, with its sale by the importer, and with its incorporation into the mass of the property of the citizens, the State cannot interfere.—The State, therefore, cannot pass a law to *prohibit* the sale, or to require the importer to take out a license to sell, in whatever quantities Congress says the article may be imported. But the new license law declares that *no person shall*

sell, for ordinary purposes, in less quantities than fifteen gallons. This applies to importers and all others; and as the laws of Congress do now authorize the importation of 'mixed liquors, part of which is spirituous,' in quantities less than fifteen gallons, the license law, in that particular, is a violation of the letter of the constitution of the United States; and as its aim is to prevent importation by prohibiting sale, its whole tenor is a violation of the spirit of the constitution, and a dishonorable evasion of the constitutional compact, which gives to Congress the regulation of commerce. If a State can evade a cession of power to Congress in this way, why not evade the compact on slavery, or on any other matter of compromise? Should the next Congress authorize all ardent spirits to be imported in less quantities than fifteen gallons, then the law would be wholly unconstitutional, for it makes no distinction in favor of the importer, but prohibits the sale by any and every citizen. In the event of collision, the law of the State must yield to the law of Congress; and yet the law of the State is expressly designed to make the law of Congress unavailing, and of no use to the citizen.

Now, without consulting any lawyer or any author, I want to hold you, if you can be held to anything, to this one point that the laws of the State cannot prevent the introduction into such State, of this article of merchandize, in such quantities as Congress prescribes; cannot prevent its actual sale, in such quantities, to the citizens of the State; and cannot prevent or obstruct its incorporation into the mass of property.

Judge Story goes farther than this, and says, that 'whatever restrains or prevents the introduction or importation of goods into the country, authorized and allowed by Congress, whether in the shape of a tax or other charge, or whether before or after their arrival in port, interferes with the exclusive right of Congress to regulate commerce.' And he adds, "there is no difference, in effect, between the power to prohibit the sale of an article, and to prohibit its introduction into the country. None would be imported, if none could be sold."

This looks to me like common sense and common honesty. How do you and your law square with it? You are compelled to admit that you cannot prohibit the introduction and sale, in any quantity Congress allows, by the importer. He brings it on the good faith of public laws and constitutions; pays the duties, and offers to sell it. You then step in with your law and say, that no citizen shall sell with or without license, under fifteen gallons. You thus assume to prohibit the sale, when you know you cannot prohibit the introduction, and thus, according to Judge Story, you in effect do prohibit introduction, by denying sale. Even if you let the importer sell, you then step in and confiscate the property in the hands of him who buys, by declaring it shall go no further.

To my notion, this is very much of a 'striped pig' sort of operation, unworthy a dignified and high-minded Legislature. It is a small kind of chicanery, and indirectly annuls the laws of Congress, which the State dares not do openly. It proves that the law is founded in chicanery, and quibble, and subterfuge, and is intended indirectly to deprive the citizen of rights it dare not take from him boldly. We agree, then, on both sides, that there is no power to get rid of the importation and mixing up of this article with the mass of property.

Let me now correct a few of your very crude notions on other points. You talk of foreign rags loaded with cholera, and ask whence comes the right of a State to pass health laws? And this right you find in 'necessity, which knows no law!' Profound Peter! illustrious expounder! If the awyer you employed to write down the constitutional argument in the Appeal, gave you this information, he ought not to have considered himself any lawyer at all. The Supreme Court of the United States will tell you, that "the laws of the United States expressly sanction the quarantine and other restraints which shall be required and established by the HEALTH LAWS of any State, and declare that they shall be observed by revenue officers."

Perhaps it is not strange, neighbor, that you should mistake so egregiously in your law, as I take it you did in fact

consult nobody but yourself, and in that case, you know, the proverb says, that the man who is his own lawyer generally has a fool for his client. But I am surprised, that, after introducing into your own family, from my store, so many jugs of ardents, to say nothing of the French wines now in your cellar, selected in your late travels, you should compare the article to *tainted hides* or *infected rags*. The one is a physical pestilence, a public nuisance; but even the power to exclude a cargo of infected rags, depends upon the express sanction of Congress. Should a State prohibit the sale of rags or hides, in less than fifteen bales at a time, would such a law be anything less than a restriction upon those articles of importation? Health laws and police laws apply to particular exceptions from general rules. Rags and hides are admitted as a general article of merchandise; but if a particular cargo be infected, it is put under quarantine. It is a direct physical evil, not a remote and consequential moral evil, which health and police laws guard against.

As to the old law, I care not whether it was right or wrong. That does not make this law right. But a child can see the difference. The old law did not assume to abolish the sale in any quantity. It regulated it. The new law assumes to abolish the sale, and make it a crime, under a certain quantity. Your argument, that the Commissioners, in some counties, did not license under the old law, applies to the administration of the law, by certain judges, in the exercise of their discretion; whether right or wrong, is another question. The old law declared that no person should "presume to be a retailer," that is, to exercise a certain trade, unless licensed; and, by creating Commissioners to license this trade, the law implied that it was to be done. Consequently, it regulated a certain trade, but did not deny the absolute right to sell property lawfully acquired, as the new law does. If you ever read the memorials for the new law, you must have seen that prohibition and penal acts were asked for,

Your

NEIGHBOR SMITH.

To my NEIGHBOR PARLEY.

(2)

LETTER III.

IS THE LAWS AGAINST THE STATE CONSTITUTIONAL.

The conclusion to which I think I brought the argument in my last letter, was that the new law if not as a whole, palpably a violation of the U. S. Constitution, is a small, cunning and tricky evasion of its spirit and meaning, and a violation of public faith, disreputable to a high minded Legislature.

Your third letter is given to the inquiry "*whether the License Law is compatible with the Constitution of this Commonwealth.*" This requires a short answer. I ask you if this article of merchandize which is protected by the U. States laws in its importation and incorporation into the mass of property in a State, is or is not property? Have you a property in the choice French wines in your cellar, or in the contents of the "Jugs" you have so often had filled with good liquor?

What then is essential to this right of property. Is it not the right of transfer? What would you say of your right of property in your own books, if the Legislature should make it a penal offence for you, or any bookseller, to sell in less than fifteen copy rights at a time? Or if it should enact that not less than fifteen copies should be sold for any purpose except to paper trunks and do up apothecary's prescriptions? Is not the right of property as absolute in one case as in the other. The Legislature may regulate occupations and trades, but it cannot confiscate property in the hands of its citizens, or take from the whole, or any portion of it, the only quality which gives it essential value; the right of transfer and sale for all the ordinary uses to which it may be put. Your law takes from a specific property; an article of merchandize and lawful possessions; the most absolute and essential qualification of property. If you can destroy this right, absolutely, as to a specific portion of lawful property, you can do it as to the whole; and if to one article of merchandize, then to all.

The distinction between all former and the present license laws, which you do not seem to be capable of comprehending, or which you conceal if you do; is just this as I understand it. The old law regulates occupation and employment. It

says "no person shall presume to be a retailer or seller of wine, brandy, rum or other spirituous liquors, in a less quantity than twenty eight gallons, unless he is first licensed as a retailer." This, like the restrictions on pedlars &c. relates to the trade or occupation, and however arbitrary or unjust laws may be taxing trades and occupations, I suppose the Legislature may have the power to pass them, but if they are manifestly unjust, the people will at once repeal them. Mere might does not make right. But your law is founded on mere might, without any right at all, and makes the State Constitution mean nothing. I will tell you why.

Your new license law introduces a principle, unheard of before in any laws except the blue laws, or the Spanish laws of monopoly. It says that 'no person shall sell any brandy, rum or other spirituous liquors, or any mixed liquor part of which is spirituous, in a less quantity than fifteen gallons.'

The law thus absolutely prohibits the right of sale of a particular description of property. It does not merely restrict its sale by certain persons, but annuls it altogether for ordinary uses. It declares that the citizen shall not sell it, and that no person shall be allowed to sell it for him, thus directly confiscating this property in his hands, and depriving it of the most essential quality of property.

Now then what says the State Constitution ; for remember here is property, lawfully imported, lawfully acquired and mixed up with the mass of property. What will you do with it? How single it out and proscribe it except under general 'standing laws, which apply to all the rights of property.'

The Constitution of the State, says, first, that among our unalienable rights, is 'the right of acquiring, possessing and protecting property.'

In the second place, it says, each individual shall be protected by society in the *enjoyment* of his life, liberty, and *property*, according to standing laws, and no *part* of the property of any individual can be taken from him by the Legislature, without a reasonable compensation.

It would seem, then, very plain, that a law which absolutely and directly deprives property of its sole qualification of

value, by denying to it the right of sale, either by its owner or through any other person, is a law taking away a part of the property of a citizen, and deprives him of the enjoyment of that part of his property which is secured to him by the constitution.

The exception to this, in the new law, which permits apothecaries and doctors to sell for a specific *use*, is more arbitrary than the law itself.

It sets up, in the first place, a particular *profession*, to which is given the monopoly of traffic in a particular description of merchandise. It does not merely regulate occupation and trade, by requiring licenses or appointing officers with discretionary powers as to what citizen shall have the license; but it enacts outright, that a certain learned profession shall have the exclusive profit of this trade. All who now use the trade are excluded, even from selling it for medicine and the arts. Is not this an unjust proscription of a whole class of citizens? A man must qualify himself to be a physician or apothecary, before he can buy this privilege, not of exercising his profession, but of vending for the arts an article of profit, hitherto never sold as a part of the stock of an apothecary's shop or a doctor's saddle-bags; and he must have, besides, two thousand constituents; quite enough to make a Senator, before he is fully qualified.

Further than this; your law, after violating the spirit of the constitution, by enacting that a certain profession or association of men, called doctors and apothecaries, *shall* have the "*particular and exclusive privilege*, distinct from the rest of the community," of trading in a particular article of universal property; undertakes to say for what particular *use*, and no other, this property shall be sold, even by this privileged class.

If you can make the common sense of the common-school educated people of Massachusetts, satisfied that such a law is no infringement of our Bill of Rights, you can convince them, just as well, that there is no Bill of Rights at all, except in the omnipotent will or caprice of the Legislature.

There are other general provisions of the constitution

which this law infringes, but I think this one argument enough. So much for the incompatibility of your law with the State constitution. Now for some of your *imported* notions on this subject of equal rights and equal laws.

To get over the pinching charge, that this law is designed only to restrain the poor, while it leaves the rich to free indulgence, you assume that the article can be sold for all good and *salutary* purposes, by the thimble full; that is, by a particular profession. You then add:—"But it is used for purposes destructive to health and life; it is used in a manner to *increase pauperism*, to inflame bad passions and *promote crime*. It is used in a manner to become a *pestilent disturber* of the peace of society. Thus it is rendered dangerous to the community, The *particular way* in which this danger arises, is in *its being sold as a drink under fifteen gallons.*"

This is your language; and what does it say? Why, that all the pauperism, all the bad passions, all the crime, all the breaches of the peace, which spring from intoxication, are found in that class of citizens who cannot well buy fifteen gallons at one time! Your whole reliance on your new law to make men sober, is that it will prevent this class from buying, while the simple fact that a man can buy fifteen gallons, is a sufficient guarantee that he will not produce pauperism, crime, or riot in the community! He may sip and soak at home or at his neighbor's house as much as he likes. There is no danger of drunkards only from those who buy by little.

For this flattering estimate of the *moral character* of a very large portion of your constituents, you sit in state in your castle of Rockland, at the head of a luxurious dinner party, surrounded by your select French wines, and ask the people to make you a grave and reverend Senator, that you may put further restrictions upon their appetites for the good of their souls! *You*, to be sure, are safe, but your *poorer neighbors* must be protected against their own appetites! Perhaps they may vote for you, and thank you for this paternal guardianship over their moral agency. I shall do neither.

I have seen, in another publication, attributed, by some, to

you, this sentence, in exact keeping with the foregoing disparagement of the men of moderate means :

"It seems a little hard, that *the poor country people* cannot be allowed to pass a law to *protect themselves* against being *first BESOTTED, and then ruined.*"

So it seems, that the "poor country people," that is, all those who cannot conveniently buy fifteen gallons at a time, as you can, are so given to drunkenness, that, if they can get at rum at all, they are sure to become, first *besotted*, and then ruined !

Is another word necessary to show that this law of yours had its origin in utter contempt for the decency, the morals, and the capacity of the common people ?

You bring in laws relating to the fire department, as to the material of which houses are to be built, and urge it as a parallel case, when these are mere matters of police, and relate to *physical*, not moral evils and dangers. Show me a law which forbids a poor man to build any house at all, or from hiring any house, unless he is able to pay a certain rent, and you will then have a parallel case. No other law but this, prevents any citizen enjoying what another can, in exact proportion to his means.

You deny that this is a *sumptuary* law, and your reason, if I understand it, is this : that it does not profess to restrain the appetites and luxuries of the *rich*, only the *poor*. True, it is a sumptuary law at the wrong end. But that it is such, you have the declaration of Chancellor Kent, who considered the law with reference to the United States constitution only, but with no reference to the State constitution. He says :

"The *sumptuary law* in question falls within the cognizance of the State governments. The States may pass what *sumptuary laws* they please, in restraint of the manners and habits of the residents therein. All such regulations, however *stern* they may be, rest entirely on the wisdom and sense of expediency of the local legislature, provided they be *consistent with the constitution of the State.*"

That is the question, and I have endeavored to give the answer in this reply to your third letter.

Your

NEIGHBOR SMITH.

To my NEIGHBOR PARLEY.

LETTER IV.

MORAL MEANS OR FORCE LAWS.

Your fourth letter seems intended to consider which of these means are best adapted to promote temperance. But you state the argument of the opponents of the force law unjustly. You put into their mouths positions never assumed by them, namely, that "moral means are the *only* proper means for the suppression of *intemperance*; and that the *regulation* of *intemperance* ought to be left to public opinion." Do you know the meaning of the word "intemperance"? Is *temperance* total abstinence?

These "trite degmas," you add, "have acquired the *flavor of slang*." Then, Sir, it is the flavor of your own slang, for no one else ever used this as an argument. Intemperance, drunkenness, is declared a crime, and is punished as such by express law. No good citizen objects to that law. Wherever the offence is committed, the law punishes it, in this as in all other cases of an act which is in itself a crime or an offence,

Where you learnt the distinction between *crime* and *offence*, which you set up with such apparently profound legal science, I have been unable to discover. Wherever a penalty is attached to an act, as a punishment, that act is a crime or a misdemeanor. Mere injuries are remedied by compensation in damages; but whenever the Legislature undertakes to repress or prevent any act by the terror of *punishment*, then that act is made a crime. I am told that any law student who has read Blackstone, would have informed you that any act committed or omitted, in violation of the public law, either forbidding or commanding it, is a crime or misdemeanor.

There are eight chapters in the Revised Statutes, headed "Offences," and every one of them is made a *crime* by law, including drunkenness as one. Where did you get your distinction?

Why, friend Peter, you were yourself, I believe, on the committee that reported this law, and you there say in the Report, "the proposition submitted to the Legislature is, that *all* laws, authorizing the sale of intoxicating liquors, may be repealed, and that such *sale* may be made *penal*." On this basis the new law was founded.

And now you undertake to say, in your letters to me, that "this law punishes its violation as an *offence*, and not as a *crime*!" a distinction which you affirm is well understood by lawyers. Was it ignorance, then, or intentional deception, that induced you, with such assurance, to charge upon the "Appeal" for affirming that the license law "punishes as a *crime*," "one of those *artifices*, which one, knowing its *baseness*, does not use without a *sinister design*"?

The question, then, is not as you put it in your fourth letter, whether there shall be no law to punish intemperance or drunkenness, but it is whether there shall be a law to enforce, by pains, penalties, and imprisonment, the extreme *self-denial* of TOTAL ABSTINENCE; especially when that law is to be framed so as only to compel the poor to abstain, while the rich are to be indulged as freely as ever. This simple statement of the true question, answers your whole argument on this head, because it shows your premises to be falsely assumed. Your inferences are not less so; for, after contending that the mere sale or use of spirits is *not* a crime, and defending the law against such a construction, you then go on to justify this very law, as standing on the *same ground* as laws against theft, robbery, murder, and the like; in short, all "statutes to restrain vice and crime."

When you can find a law against one man owning or showing property, lest it should be stolen, or carrying money about his person, lest he should be robbed or murdered, then bring them up as parallel to this law, which assumes to *punish*, not an act injurious to society, but to prohibit and punish the transfer of an article of merchandise, lawfully incorporated into the mass of property, lest he who buys it should make a wrong use of it.

You cannot stand on any such doctrine as this. No law, since we had a constitution, was ever put upon such a foundation, namely, to punish in one citizen the possible bad tendencies of his lawful act in another. Why not punish *you* for keeping choice wines in your cellar; for filling your jugs, whether over or under fifteen gallons; for drinking Champagne at dinner parties; or for any act which tends to incite the appetite or promote the custom of drinking intoxicating liquors, in private houses or social intercourse? In short, why not punish every citizen who does not *totally abstain* from the use of intoxicating beverages?

If you are prepared to go this length, without which your law will prove useless, in its professed object, then the people will be prepared to prevent such invasions of every inalienable right derived from nature and secured by the constitution. If you are *not* prepared to go this length, then retrace your steps, and bring the laws on this question back to the old principle of regulation, not prohibition; and not attempt to force virtue by penal enactments on the assumption that you will punish one citizen for doing a lawful act, lest another should commit a crime.

A hardware merchant in this city, the other day, sold a pair of pistols, powder and ball, to a Southern blood, who walked back directly to the Tremont House, and fired one of

them deliberately, within an inch of another man's life. Why not petition for a law to punish the sale of fire arms by retail? Where is the difference? Your fine edifice, beautiful grounds, rich upholstery, may tempt a poorer man to incur an expense in his style of living that impels him to crime. Shall *you* be punished because your acts or your example might be a tendency to such results in others!

No sir, punish crime wherever you find it. Preserve peace and good order in all private and public places, so far as the community is concerned. Regulate trades and occupations and the places in which they are carried on, within the limits of the constitution, for the public good. Break up all disorderly houses, all lawless disturbances of good neighborhoods, prohibit and punish gambling, lottery dealing and lewdness, because in themselves crimes, and because no Supreme law of the land authorizes their importation into the State, and mixing up with the mass of property. But take care how you deny to lawful property its essential quality of value, *sale*; or how you punish an innocent man to prevent others being guilty.

Beyond these limits you cannot go to enforce by law, any moral reform, however noble, however desirable. Resort, as all moral reformers who were not persecutors and bigots, always have done; to reason and argument, the still small voice of moral suasion, and not enforce the terror of the law to restrain poor men's appetites. Take away the customers of the dealer by persuasion and *example*, and you will then have no occasion to resort to pains and penalties against a lawful occupation, or to brand as criminals, citizens as upright in their occupation as you are in yours.

Your

NEIGHBOR SMITH.

To my neighbor PARLEY.

LETTER V.

IS THE LAW EXPEDIENT?

The fifth and last of your letters are a mere repetition of those that precede them. You reason in a circle. First, you admit that the new law is good for nothing, unless public sentiment will sustain it, and then you contend that public opinion requires to be *fortified* by the law. This argument may be illustrated after your own fashion of the story of the drunken man converted by Parson Becket. That same individual, on another occasion, seized hold of a good firm post, exclaiming, "united we stand," but, letting go, down he went, with "divided we fall." You connect your law with public opinion as the drunken man did the mutual support between him

and the post. But it is only your law that will tumble down. Public opinion will stand firm.

By your own showing, public opinion was doing all that reasonable men could expect or desire in this moral reform. You state that, without this law, "five out of *twelve* counties in the State," (there are fourteen) have dispensed with the retail trade by the force of public opinion.

Having gained this, you and the supporters of the new law, instead of rejoicing in this success and continuing in well doing, seem to have resolved to carry the rest of the State by a sort of *conquest*; and to this unfortunate zeal is to be attributed the injury done to the cause of just rights as well as to the moral influences of the cause of temperance, by urging the force law; a law which was obviously unnecessary, and therefore inexpedient, because the advance of the practice of total abstinence was as rapid as could be consistent with sound *conviction*, on which alone it can stand for any length of time.

The great injury you have done to the moral cause of temperance by this unnecessary and inexpedient law to force it beyond public sentiment, is this:—Up to the period of the passage of that law, there was no opposition to the temperance movements. The whole community entertained no distrust of temperance societies. They apprehended no extraordinary efforts or combinations on their part, and feared no infringement of fundamental, constitutional principles.

This was the reason that the force law passed so readily through the Legislature. It met with no great opposition, and was so little discussed, on general principles, as not to bring out the strongest grounds of objection to it. While it was in fact a question of property rights and personal rights, it was regarded merely as a question of temperance. Hence, many persons honestly voted for it, who as honestly will be satisfied, on looking at it, that it is of doubtful right, and unnecessary and inexpedient.

The mere fact that it has raised so strong an opposition, and brought out so many of the finest of the original supporters of temperance against it, is ample proof that it has done, and will continue to do, till repealed, more harm than good. The friends of temperance are divided on this law. The party that had the control of the Legislature, when it was passed, are divided on it; and, what is more, this division is not on the question whether temperance shall or shall not be advanced, but whether this law is not unconstitutional, and an outrage upon equal rights and fundamental principles.

Thus you have drawn the public aside from the true issue, and excited the alarm of the community, lest this first step in putting a *sumptuary law* upon the statute book, should lead to any and every infringement of private right, which fanaticism or bigotry may at any time fancy is incompatible with the success of a cause of moral or religious reform.

In such a case, there should be no possible ground for doubt. To say that such a law is of *doubtful* constitutionality, *doubtful* as to expediency, *doubtful* as to the principle of legislation, *doubt-*

ful as to public sentiment, and *doubtful* as to its beneficial effects on the cause it is intended to advance, is (each and every one of the doubts) a sufficient reason why such a law should never have been passed, and should now be repealed.

I have now shaken up, and, I think, emptied out, the entire contents of your "Fifteen Gallon Jug," and sent it back to you, so *cracked* as to be of no further use. All that remains is the *sediment* of your personality.

I have read all the publications on your side of the question, and most of the papers which advocate it, and in no controversy I ever heard of, has there been so much uncharitableness, virulence, vituperation, and vulgar blackguard applied by one party to another, as the party who uphold this law have heaped upon those who oppose it; of which you have given your full share in the contents of your *Jug*. For instance, here are a string of epithets which I find applied by that portion of the Whig party in Boston who uphold the law, to that portion who oppose it.

"Whig liquor dealers, whose inclination to deal in rum is more than a match for their patriotism; petty, little faction; dictators of the party; playing a deep game; preconcert, manœuvring, and fraud; selfish and private ends; secrecy of some eastern despotism; no respect for the (Whig) committee nor any confidence in it; tainted with fraud, treachery, usurpation, proscription, and favoritism; proscriptionists; RUM WHIGS AND RUMSELLERS; STRIPED PIG LIQUOR DEALERS!"

You do not like this catalogue; but wherein is your language better, when you say that the opponents of this law are "those who seek to throw down the wholesome barriers of virtue, and extend the spirit of licentiousness"?

You kindly caution me against the company in which you say I find myself. Whenever I am associated with men who, like these friends and supporters of yours, and like yourself, use such weapons as *arguments*, to advance a *moral* cause, I will thank you to warn me, as I now do you, to escape from such contamination as quick as possible.

And how much more charitable, or refined, or just, is your own language, when you say of a large class of your fellow-citizens, including myself, that they "ought to be charged in account, annually, for one half the pauperism, one half the insanity, one half the conflagrations, one half the suicides, thefts, murders, and rapes of society."

If this tirade means anything, it means that liquor dealers are responsible, morally, for one half the crimes committed by those who buy intoxicating liquors. In that event, I must be responsible for one half of *your* sins, and I ought to be obliged to you for your neighborly kindness in throwing this burden from your own, upon my shoulders. The fact is, I do not remember to have filled any

customer's jugs, that I considered any less able to take care of himself and regulate his appetites, than I did you. You can judge, then, how much will fall to my share of the crimes of my customers.

On the same principle, you will attach to banks and money-lenders, one half of all the gambling, and all the vices that money, or any part of it, has been used to perpetrate. You will also fasten upon the whole body of authors, of which you are one, one half of all the evils and mischiefs that have been incited by books and pamphlets?

But if the seller has this responsibility to assume, what share must fall upon the good-society DRINKER? It is this example, your own example in social intercourse, such examples as were given by the principal framers of this law, in the festival at Faneuil Hall the other day, in honor of a distinguished citizen; that do more to countenance intemperance in the poorer classes, than a hundred liquor dealers do, or a hundred force laws could ever undo.

Take, then, the estimate of the proportion I have shown you have purchased since 1836, and then tell me, what proportion of the crimes you enumerate, are to be charged, annually, to your private account.

Your

NEIGHBOR SMITH.

To my NEIGHBOR PARLEY.

THE CONGRATULATION.

Let me now, in conclusion, congratulate you upon your nomination for the Senate of this Commonwealth. Your fellow citizens, especially those whom you declare to be incapable of protecting themselves against becoming sots, without your paternal legislation; will now have the opportunity of thanking you for this solicitude in their behalf. Your temperance constituents, also; men who are in uniform practice, as well as precept, temperate in all things; will now be enabled to show their respect for your sincerity and consistency in the cause of total abstinence.

Should you apprehend any thing on this score, give a practical illustration of the equality and justice of the new license law. Call the laboring men you employ, around you; invite your rich friends to your costly mansion. Set before them your choice French wines, or the contents of your fifteen gallon jug. If it is empty, send it by one of your men to my store, to be filled.

Indulge, temperately of course, in the luxury your means thus enable you to surround yourself with, under the sanction of your own law, and if your workmen who see all this, complain that they cannot purchase ever so little of what you have so much, assure them that it is all for their good, and for the common good of common people that *their* depraved appetites should be restrained by penal enactments, lest they should become paupers and increase your taxes; but that you and your wealthy friends are invulnerable to temptation and may be safely trusted to your own more enlightened moral sense of right and wrong. Farewell, N. S.



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